IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2719 OF 2003

P.B. Akolkar ..Petitioner
Vs.
State of Maharashtra & Ors. ..Respondents

Mr.Dr.R.S. Kulkarni with MR. Abhay Kulkarni for Petitioner
Mr.R.M. Sawant, Government Pleader for Respondent No.1 to 3

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 13TH APRIL, 2005.

P.C.

. Rule, Heard forthwith.

. After the Petition was filed Petitioner has expired. His legal heirs have been brought on record and the matter is proceeded by his Legal heirs.

. The Petition is restricted to terminal benefits. On behalf of the Respondents it is pointed out that all benefits except pension has been paid.

. In so far as pension is concerned it appears that the Petitioner joined as a member of Industrial Court on 21st January, 1995. He was allowed to retire with effect from 21st July, 2002. Two

Displinary Enquiries were initiated against him. In the first proceeding in terms of the record available with the Respondent instead of imposing punishment the period of suspension was treated as punishment. Learned Counsel states that it cannot be said it is a punishment imposed for a misconduct in terms of the MCS Rules. Suspension is a minor misconduct and punishment could be imposed without holding a formal enquiry.

. In so far as other enquiry was concerned the enquiry was dropped.

. The Petitioner was under suspension for about a period of one year eleven months. By excluding this period it is held that the Petitioner had not completed period for pensionable service.

. Our attention is invited to Rule 53 of the Maharashtra Civil Services (Pension) Rules. In terms of Rule 53, if appointment is by direct recruitment then for the purpose of superannuation pension the period of service as set out in the Rule has to be added. As the Petitioner was a member of the Industrial Court and as he had joined when he was more than 40 years of age, it is open to add to his qualifying service a period of up to 10 years. It appears that has not been considered while

rejecting his case for pension.

. Considering the above it will be open to the legal heirs of the petitioner to make a representation to the Appointing Authority, pointing out therein that Rule 53 is applicable and considering Rule 53 the deceased had pensionable service. On such representation the Appointing Authority to take a decision within two months there after and communicate the same to the legal heirs of the Petitioner.

. Needless to say if the order is adverse it will always open to the legal heirs to take appropriate steps reasonably entitled to.

. Petition stands disposed of accordingly. No order as to costs.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)